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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,435	02/08/2002	Jason C. Shermer	0275S-000563	2587
27572	7590	09/30/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			RHEE, JANE J	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/072,435

**Applicant(s)**

SHERMER ET AL.

**Examiner**

Jane Rhee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/16/02
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Rejections Withdrawn***

1. The 35 U.S.C. 102(b) rejection of claims 1,7-17,20 anticipated by Martin et al. has been withdrawn due to applicant's arguments in response 5/17/2005.
2. The 35 U.S.C. 103(a) rejection of claims 2-6, 18-19, 21-23 over Martin et al. in view of Pearce has been withdrawn due to applicant's arguments in response 5/17/2005.

### ***New Rejections***

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 11099254. Claim 1 of 10072435 and claim 1 of 11099254 both claim a universal abrasive sheet material for use with alternative sanding or polishing machines having patens with different configurations comprising a sheet

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material having an abrasive material disposed on a face and having body portion provided with a first configuration adapted to be used with a first platen configuration and having first segments defining regions of weakened material, wherein the sheet material is adapted to be separated along the first segments to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimensions. Claim 2 of present application '435 and claim 2 of copending application '254 both claim an abrasive sheet that further comprises second segments defining regions of weakened material wherein the sheet material is adapted to be separated along the second segments to change a configuration of the body portion to correspond with a third different configured platen. Claim 9 of present application '435 and claim 3 of copending application '254 both claim wherein the first configuration of the sheet material is iron shaped. Claim 10 of present application '435 and claim 4 of copending application '254 both claim attachment means for attaching a second face of the sheet material to a platen. Claim 11 of present application '435 and claim 5 of copending application '254 both disclose wherein the attachment means includes hooks or eyes of hook and loop fastening system. Claim 15 of present application '435 and claim 6 of copending application '254 both claim wherein the regions of weakened material include a score line drawn on the sheet material. Claim 16 of present application and claim 7 of copending application both claim wherein the weakened material include perforations. Claim 17 of the present application and claim 8 of the copending application both claim a sheet material having an abrasive material disposed on a face and having a body portion provided with a first configuration

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adapted to be used with a first platen configuration and having a body portion provided with a first configuration adapted to be used with a first platen configuration and having first marking segments, wherein the sheet material is adapted to be separated along the first marking segments to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimensions. Claim 18 of the present application and claim 9 of copending application '254 both claim wherein the sheet material further comprises second marking segments, wherein the sheet material is adapted to be separated along the second marking segments to change a configuration of the body portion to correspond with a third differently configured platen. Claim 20 of the present application and claim 10 of copending application '254 both claim marking segments are drawn on the sheet material.

This is a provisional obviousness-type double patenting rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,7-17,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. in view of Simons (1635350).

As to claims 1 and 17, Martin et al. discloses a universal sheet comprising a sheet material having an abrasive material disposed on a face (figure 1 number 3) and

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having a body portion (figure 1 number 1) and a tip portion (figure 1 number 11), the tip portion being separable from the body portion (figure 1 number 7) and defining a separate region of the sheet material relative to the body portion (figure 1 number 7), the body portion being provided with a first configuration adapted to be used with a first platen configuration (figure 1 number 1). Martin et al. fail to disclose first segments defining regions of weakened material, wherein the sheet material is adapted to be separated along the first segments to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimension than the first configuration.

As to claim 7, Martin et al. discloses that the sheet material includes a body portion and a tip portion separated by a second segment defining regions of weakened material wherein the tip portion can be separated from the body portion, turned through an angle and repositioned adjacent the body portion to change a working point of the tip portion (col. 3 lines 1-4). As to claim 8, Martin et al. teaches that the tip portion has at least one side, which is in position adjacent to the body portion and that the body portion is produced in an iron shaped sheet (col. 1 lines 30-33). As to claim 9, Martin et al. discloses that the first configuration of the sheet material is iron shaped (figure 2). As to claims 10-11, Martin et al. discloses attachments means that includes hook and loop fastening systems (col. 2 lines 25-28) for attaching one face of the sheet material to a platen (col. 2 lines 25-28). As to claim 13, Martin et al. discloses wherein the body portion and the tip portion are separated by a second segment (figure 1 number 7) of weakened material wherein the tip portion can be separated from the body portion, the

tip portion having four sides or three sides (figure 2 number 5). As to claims 14-16, and 20, Martin et al. discloses that the weakened material include perforations (figure 2 number 24) and that the regions of weakened material include score line drawn on the sheet material (figure 2 number 24).

Simons teaches first segments defining regions of weakened material, wherein the sheet material is adapted to be separated along the first segments to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimension than the first configuration (figure 1 number 4) for the purpose of providing multiple sizes of the sandpaper (col. 2 lines 48-60).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Martin et al. with first segments defining regions of weakened material, wherein the sheet material is adapted to be separated along the first segments to change a configuration of the body portion of the sheet material to correspond with a second platen configuration having different external dimension than the first configuration in order to provide multiple sizes of the sandpaper (col. 2 lines 48-60).

5. Claims 2-6, 18-19, 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. in view of Simons and in further view of Pearce (5367839).

Martin et al. discloses the universal abrasive sheet described above. As to claim 2, 18, Martin et al. fails to disclose that the sheet material further comprises second

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segments defining regions of weakened material, wherein the sheet material is adapted to be separated along the second segments to change a configuration of the body portion to correspond with a third differently configured platen. As to claim 3,19,21 Martin et al. fails to disclose that the body portion and tip portion have varying configurations defined by second and third segments defining regions of weakened material, wherein the sheet material is adapted to be separated along the second segments to separate a first tip portion, having a first tip configuration, from a first body portion having a first body configuration and the sheet material is adapted to be selectively separated along the third segments to separate a second tip portion, having a second tip configuration different from the first tip configuration, from a second body portion having a second body configuration different from the first body configuration. As to claims 4-5,22-23 Martin et al. fails to disclose that the first and second tip configurations have different sizes and different shapes. As to claim 6, Martin et al. fails to disclose that the body portion and the tip portion are separated by a second segment defining regions of weakened material, and defined by a third segment defining regions of weakened material and adapted to be separated along the third segment for removing the replacement tip portion from the one of the body portion and the tip portion.

Pearce teaches first (figure 4 number 32) and second segments (figure 4 number 32') defining regions of weakened material wherein the sheet is adapted to be separated along the first and second segments to change a configuration of the body portion to correspond with a second and a third differently configured platen for the



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purpose of corresponding with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Martin et al. with first and second segments defining regions of weakened material wherein the sheet is adapted to be separated along the first and second segments to change a configuration of the body portion to correspond with a second and a third differently configured platen in order to correspond with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62) as taught by Pearce.

The second and third segments that define regions of weakened material wherein the sheet material is adapted to be separated along the second segments to separate a first tip portion, having a first tip configuration, from a first body portion having a first body configuration and the sheet material is adapted to be selectively separated along the third segments to separate a second tip portion, having a second tip configuration different from the first configuration from a second body portion having a second body configuration different from the first body configuration would have been obvious to one having ordinary skill in the art at the time applicant's invention was made since Pearce teaches a plurality of segments that define regions of weakened material wherein the sheet is adapted to be separated along two different segments (figure 1 number 2 and 2') for the purpose to correspond with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62).

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Therefore, since Pearce teaches that it is well known in the art provide second and third segments that define regions of weakened material wherein the sheet is adapted to be separated along two different segments (figure 1 number 2 and 2'), it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Martin et al. with the sheet material is adapted to be separated along the second segments to separate a first tip portion, having a first tip configuration, from a first body portion having a first body configuration and the sheet material is adapted to be selectively separated along the third segments to separate a second tip portion, having a second tip configuration different from the first configuration from a second body portion having a second body configuration different from the first body configuration in order to correspond with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62).

Pearce teaches that segments that define regions of weakened material wherein the sheet is adapted to be separated along two different segments comprise different shape and sizes (figure 1, figure 2, and figure 3, col. 2 line 59) for the purpose to correspond with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicants invention was made to provide Martin et al. with the first and second tip configurations having different sizes and different shapes in order to correspond with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62) as taught by Pearce.

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Pearce teaches a plurality of segments that define regions of weakened material wherein the sheet is adapted to be separated along two different segments (figure 1 number 2 and 2') for the purpose to correspond with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Martin with the body portion and the tip portion are separated by a second segment defining regions of weakened material, and defined by a third segment defining regions of weakened material and adapted to be separated along the third segment in order to correspond with a plurality of different sanding machines within the size range for that sheet (col. 2 lines 60-62) as taught by Pearce.

As for removing the replacement tip portion from the one of the body portion and the tip portion it is an intended use. It has been held that a recitation with respect to the manner in which the claimed particle is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee  
August 10, 2005



**PATRICK JOSEPH RYAN**  
**SUPERVISORY PATENT EXAMINER**